

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

ARAMARK CORPORATION D/B/A  
ARAMARK EDUCATIONAL SERVICES, INC. <sup>1/</sup>

Employer

and

Case 9-UC-466

HOTEL EMPLOYEES & RESTAURANT  
EMPLOYEES UNION, LOCAL 12, AFL-CIO-CLC <sup>2/</sup>

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding <sup>3/</sup>, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The Employer, with principal offices in Livonia, Michigan, is engaged in the business of providing food services at various facilities throughout several states of the United States, including its operations located on the campus of the University of Cincinnati (UC). The UC operations are the only Employer location involved in this proceeding. The UC operations include Sander Hall (Sander), Siddall Hall (Siddall),

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<sup>1/</sup> The name of the Employer appears as amended at the hearing.

<sup>2/</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3/</sup> The entire record in this proceeding includes the hearing and the briefs of the Employer and the Petitioner.

Tangeman University Center (TUC), Dining Pavilion, Event Pavilion, Alley Cat Restaurant (Alley Cat), DAAP Café, CCM Café, and the OCAS Caff. <sup>4/</sup> All of the operations referenced above are located on the main campus of UC with the exception of the OCAS Caff, which is located about two to three miles from the main campus in the College of Applied Science Building. Until about June 6, 2001 <sup>5/</sup>, the Employer also operated a "Superhero" on the premises of the UC Bookstore from which it served pre-made sandwiches, made to order sandwiches, salads and breakfast pastries.

Sander and Siddall are about 500 yards apart. Siddall is about 300 yards from TUC and Sander is about 800 yards from TUC. TUC is about 100 yards from the Dining Pavilion and the distance between the Dining Pavilion and Siddall and Sanders is about 1000 yards and 600 yards, respectively. The Event Pavilion is located about 200 to 300 yards from TUC and the Dining Pavilion, and it is located 800 yards and 500 yards from Siddall and Sander, respectively. The DAAP Café is about 300 to 400 yards from TUC and the CCM Café is about 50 yards from TUC.

The Employer has a management contract with UC for its operations on the UC campus that expires in 2007. The record reflects that the Employer is a successor to Chartwells, a division of Compass Group USA, Inc. (Chartwells), and assumed the terms of the collective-bargaining agreement between Chartwells and the Petitioner. The collective-bargaining agreement is effective from July 1, 1999 through June 30, 2002. The agreement describes the recognized bargaining unit as:

All associates of the [Employer] at Sander Hall, Siddall Hall and Tangeman University Center, University of Cincinnati, Cincinnati, Ohio excluding office clerical associates, student associates, working 20 hours per week or less, and all supervisors, as defined in the Act.

On about March 21, the Employer's operations at TUC closed for extensive renovation work, and are not scheduled to reopen until about September 2003. The TUC operations consisted of Java City (Java), a coffee and specialty drinks operation, and Pic-A-Deli, a food service operation with a hot food line, a deli and display cooking of fresh tossed pastas and salads. Prior to the temporary closure of TUC the Employer at that location employed about 11 bargaining unit employees and one student who was not a member of the bargaining unit.

The Employer currently employs about 34 bargaining unit employees at Sander, a cafeteria located in a dormitory on the UC campus. These employees are employed as cooks, service employees, pantry help and dish room employees. Sander operates from 7 a.m. to 8 p.m. Monday through Thursday, from 7 a.m. to 7 p.m. on Friday, and from 10 a.m. to 2 p.m. and 4 p.m. to 7 p.m. on Saturday and Sunday. Indeed, the hours of

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<sup>4/</sup> The DAAP Café is located in the Design, Art, Architecture & Planning building. The CCM Café and the OCAS Caff are located at the College Conservatory of Music and the College of Applied Science Building, respectively.

<sup>5/</sup> All dates herein are in calendar year 2001 unless otherwise indicated.

operation for all of the Employer's UC operations are essentially the same. The Employer also employs about 31 bargaining unit employees in similar positions in the cafeteria located at Siddall, another dormitory facility located on the campus of UC. The Employer seeks a certain level of experience in employees hired and utilized as cooks whereas the other positions are fairly simplistic and do not require experience or specialized training. Siddall is closed during the summer months. During the summer, the Siddall and the Sander employees are combined, with the most senior of the combined employees being offered the opportunity to work at Sander. The remaining employees receive seasonal layoffs.

In about late March, the Employer's 11 unit employees at TUC were transferred to the Dining Pavilion where they are employed in a Pizza Hut Express, the Bearcat Grill or Pan Geo. The Pizza Express serves pizzas, the Bearcat Grill serves hamburgers, and Pan Geo, a segment of the former Pic-A-Deli, serves display cooked tossed pastas and salads. Following the start up of operations at the Dining Pavilion, the Employer hired an additional ten employees into the bargaining unit and six part-time student employees who are excluded from the unit based on the unit description. The Employer recognized the Petitioner as the representative of the Dining Pavilion employees at the time it commenced operations at that location. The Dining Pavilion is a temporary facility and the operations at that location will cease when the TUC renovation has been completed in about September 2003.

There are about seven bargaining unit employees employed at the Pizza Hut Express and one nonbargaining unit student employee. There are about six bargaining unit employees employed at the Bearcat Grill and one nonbargaining unit student employee and there are about seven bargaining unit employees employed at Pan Geo and two nonbargaining unit student employees. The Pizza Hut employees rotate between operating the cash register, prepping pizzas, slicing pizzas and loading the oven. The Bearcat Grill and Pan Geo employees perform cashier, cook and food preparation duties. The employees of these three operations engage in occasional work related interchange. For example, when one of the operations is short staffed, an employee may be directed to go from one of the other operations to work in the operation experiencing a staffing shortage.

In early June, the Employer also established a temporary operation in a facility known as the Event Pavilion. This operation consists of Java and a Blimpie. Blimpie is a food service operation serving submarine sandwiches that are prepared on request rather than being prepackaged. In about September 2003, these operations will move into a new building for student organizations on the UC campus called the Braide Building, which is located about 50 yards from the Event Pavilion. The Employer has operated the Event Pavilion entities without recognizing the Petitioner since the inception of these operations.

The Employer's other nonrepresented entities consist of the Alley Cat, DAAP Café, CCM Café and the OCAS Caff. The employees at these facilities never have been represented or covered by the collective-bargaining agreement and the Petitioner does not

seek to include them in the unit. The Alley Cat is located in Sander Hall on the second floor. The Sander cafeteria operation is split between the first and second floors of Sander Hall with the serving and seating areas on the second floor and the cafeteria on the first floor. The Employer employs six full-time employees and two part-time employees in the Alley Cat. There is some limited contact and interchange between Alley Cat and Sander employees. Thus, Sander employees prepare rice krispie treats and brownies that are served in the Alley Cat. Additionally, the Alley Cat does not have its own dish room and dishwashers so its employees wash the Alley Cat dishes in the Sander cafeteria dishroom. None of the Alley Cat employees have transferred to any of the Employer's other operations since it took over the operation in about the summer of 2001.

The DAAP Café, located in the Design, Art, Architecture and Planning building, and the CCM Café, located in the building housing the Cincinnati Conservatory of Music, are basic snack bars serving hot pretzels, potato chips, soda and pre-made sandwiches. The pre-made sandwiches for both locations are prepared at the DAAP Café. The Employer employs about four full-time employees and one part-time employee at the DAAP Café and one full-time employee and one part-time employee at the CCM Café. The OCAS Caff, also located at the Conservatory of Music, is a full-service cafeteria with pizzas, made to order burgers, pre-made sandwiches, salads, chips and sodas. The Employer employs one full-time and two part-time employees at that location.

The Petitioner seeks to clarify the bargaining unit it currently represents to include the full-time employees who are employed by the Employer at the Java and Blimpie operations located in the Event Pavilion. Contrary to the Petitioner, the Employer contends that they should not be clarified into the existing unit because a majority of the employees employed at the Event Pavilion never have been included in the bargaining unit and that these employees do not share a community of interest with unit employees.

#### ANALYSIS:

The Event Pavilion operations were established during the term of the current collective-bargaining agreement. Additionally, the Blimpie franchise is a new addition to the several food and drink service entities operated by the Employer on the UC campus. The Java operation is, however, essentially the same operation that the Employer previously had in TUC and was merely re-established as Java at the Event Pavilion after about a 3-month hiatus.

It is well settled that a party seeking unit clarification must show that there have been “recent substantial changes in the [employer’s] operations,” *Batesville Casket Company, Inc.*, 283 NLRB 795 (1987), or that the jobs in issue are new or substantially changed since the parties entered into their last contract. *SunarHauserman*, 273 NLRB 1176 (1984); *The Washington Post Company*, 256 NLRB 1243 (1981). I find here that the closure of the Employer's TUC operations and the establishment of differing food and drink service operations at the Event Pavilion and the Dining Pavilion constitute a recent

substantial change in its operations. Moreover, at least some of the jobs in issue at the Event Pavilion are new, albeit not significantly different from other unit jobs, since the inception of the current collective-bargaining agreement. Accordingly, I find that the dispute over the unit placement of the positions in dispute may properly be resolved at this time by means of a unit clarification proceeding. See, *Union Electric Co.*, 217 NLRB 666, 667 (1975); *Crown, Cork & Seal Co.*, 203 NLRB 171 (1973).

Having found that the clarification petition is timely, I must determine whether the employees in dispute constitute an accretion to the existing unit. The overall management of the Employer's food and drink service operations on the UC main campus and associated campus is apparently vested in Senior Food Services Director, Omar Rayan. The Employer's other senior managers and supervisors at its UC operations include: Executive Chef, Rosemary Pavinski; Catering Director, Dave Anderson; Food Service Director, Niles Gebele and Marketing Manager, Chris Slaughter. Additionally, the Employer has several location managers and supervisors who are responsible for supervising employees at one or more of the Employer's locations on the UC main campus and associated campus. Supervisors and managers at Sander Hall include: Manager, Larry Puleo; Service Manager, Shara Williams; Production Manager, Ian Sroufe and Supervisor, Joe Welling. Siddall managers and supervisors include: Board Operations Manager, Angie Williams; Service Manager, Aimee Lind; Production Manager, Mike Toppin; Supervisors Clarence Landrum and Robert Tucker. The Dining Pavilion supervisors and managers are: Assistant Food Service Manager, Tom Jagels; Supervisors, Scott Thompson and Teresa Rowe.

The location managers and supervisors at the Employer's non-Union operations at UC include Manager, Shirley McGinnis, who has responsibility over all non-Union operations with the exception of the Alley Cat. The additional supervisors at the Event Pavilion, DAAP Café, CCM Café and OCAS Caff are: Supervisor, Maurice Larkin (Event Pavilion); Supervisor, Lisa Gregory (Event Pavilion); Supervisor, Alex Jameson (OCAS Caff) and Fill-in Supervisor, Vianette Gonzales (Event Pavilion). Finally, the Alley Cat is managed and supervised by: Manager, Christopher Marchand; Supervisors, Tim Smith and Duane Hudson.

The Event Pavilion, where the employees in dispute work, is a free standing facility. The Java operation is the closest to the entrance of the two operations in the pavilion and its area is defined by a front counter and a back counter. Additionally, the Java and Blimpie operations each have defined service areas with a wall between the cash registers for the respective operations. However, each also have shared or common areas. These common areas include a shared dining room and a storage and office area that includes a desk used by supervisors to count money. Java and Blimpie employees punch the same time clock and take their breaks in the common dining area.

The Employer has four employees at its Java operation, two full-time and two part-time. One of the two full-time Java employees, Vianette Gonzales, whom the parties have stipulated is a statutory supervisor, worked at the nonunion DAAP Café immediately before coming to work at Java. Prior to working at the DAAP Café she

worked at Pizza Hut at the Dining Pavilion for about 5 weeks in the spring of 2001 where she was part of the recognized bargaining unit. Gonzales was later transferred to the Dining Pavilion from the TUC where she was also a member of the unit. Gonzales was the first individual employed at the Java operation at the Event Pavilion. Gonzales was relocated to that facility in June. In September, the other full-time Java employee, Felicia Hill, came to Java after a summer layoff from Pizza Hut at the Dining Pavilion. Prior to working at Pizza Hut, Hill too had been employed at TUC. She also had been a member of the bargaining unit at both the Dining Pavilion and TUC. The other two Java employees, one of whom is a student, work less than 20 hours a week and do not fall within the contractual description of the bargaining unit.

The four initial Blimpie employees were previously employed by the Employer at its nonunion Superhero operation that was formerly located at the UC Bookstore. One of these four employees, Gregory, was promoted to a supervisory position over both the Blimpie and Java employees. In addition to Gregory, the Java and Blimpie employees, as noted above, also are jointly supervised by Larkin and McGinnis. There are currently three full-time employees at Blimpie, excluding supervisors, with the Employer having recently hired two employees off the street after one of the original Blimpie employees quit his employment. The Employer also currently employs at Blimpie one part-time employee who works less than 20 hours a week.

The Java and Blimpie employees enjoy the same benefits and are paid similar wages: \$7 to \$8 an hour for Blimpie employees and \$7.25 to \$8 an hour for Java employees. These wages and benefits are comparable to the wages and benefits paid to employees employed at the DAAP Café, CCM Café, and the OCAS Caff, although the starting wage at the CCM Café may be as high as \$8.50 an hour. Employees at the Employer's non-Union operations also are eligible for annual performance increases between two and five percent. The hourly rate of pay for employees in the bargaining unit who have at least a year of service ranges from \$8.62 to \$9.57 an hour, depending on job classification. The contract also provides for regular additional increases during its term. However, under the contract the minimum wage rate for new hires within the unit ranges from \$6.25 to \$7.62 an hour depending on job classification. Accordingly, it appears that the wages of unit employees are comparable to those of non-unit employees.

With regard to benefits, health insurance coverage is offered to both unit and non-unit employees. The record does not disclose the precise differences, if any, between the plans offered to unit and non-unit employees. However, it appears that non-unit employees pay an unspecified co-payment for coverage whereas there is no co-payment for unit employees. Unit employees also receive a contractually required pension contribution from the Employer whereas non-unit employees are eligible to contribute to a 401K plan. The record does not disclose whether the Employer matches any portion of employee contributions to its 401K plan for non-unit employees.

In the event there is a high volume of business or short staffing at Blimpie an employee or employees from Java may be assigned to work at Blimpie. It appears that this type of work interchange occurs more frequently shortly after the beginning of a

school quarter. Blimpie employees do not typically cover for any shortstaffing at Java as some training is required to make the specialty drinks offered by Java. Rather, Larkin or Gregory typically assist at Java in the event of a staffing shortage.

The Java employees make coffee and other specialty drinks and operate a cash register. The Blimpie employees are primarily engaged in the preparation of submarine sandwiches that are prepared at the specific request of on-site customers. The Blimpie employees also operate a cash register. Presumably employees at both locations are responsible for cleaning and sanitizing their service areas and the common dining area.

The duties performed by the Blimpie employees are similar in nature to the service duties performed at the Employer's various other locations on the UC main campus and associated campus. However, it appears that more sophisticated cooking and food preparation takes place at Sander and Siddall, and to a lesser extent at the OCAS Caff, Alley Cat, Pizza Hut Express and Bearcat Grill. The duties performed by the Java employees are, as described above, somewhat different from the food service duties performed by the Employer's other employees at UC. However, Java brand coffee is also brewed and served in the Dining Pavilion by dining room attendants and cashiers at the Bearcat Grill who are members of the bargaining unit.

There is no day-to-day contact between employees in the Event Pavilion and employees at the Employer's other UC operations. In this regard, there is no temporary work-related interchange of employees from the Event Pavilion operations to other UC operations and vice-versa. Additionally, employees at all of the Employer's UC campus operations take their breaks and lunches in the same facilities in which they work. The only permanent interchange from still existing operations has been the aforementioned transfer of Gonzales and Hill to Java.

The accretion of employees through unit clarifications proceedings result in the inclusion of employees to bargaining units without affording them the opportunity to vote in a secret ballot election or to express their preference regarding union representation by some other accepted method. The Board, therefore, applies a "restrictive" policy in determining whether to clarify units to accrete employees to existing units. *Melbet Jewelry Co., Inc.*, 180 NLRB 107 (1969); see also, *United Parcel Service*, 303 NLRB 326 (1991). Indeed, the Board will find an accretion only when the employees sought to be added to a unit have little or no separate group identity and cannot constitute a separate appropriate unit and/or have an overwhelming community of interest with the existing unit. Compare: *Towne Ford Sales and Town Imports*, 270 NLRB 311 (1984), *enf'd*, 759 F.2d 477 (9<sup>th</sup> Cir. 1985), with *Compact Video Services*, 284 NLRB 117 (1987) and *Safeway Stores, Inc.*, 256 NLRB 918 (1981). Although it is not entirely clear from Board precedent whether accretion is appropriate when the employees who would be added to the existing unit merely would not constitute a separate appropriate unit or whether they must also have an overwhelming community of interest with the represented employees, the criteria considered by the Board in determining whether employees constitute an accretion to an existing unit include: (1) the integration of operations; (2) commonality of day-to-day supervision; (3) similarity of working

conditions; (4) common control over labor relations; (5) collective bargaining history and (6) geographical proximity. *Compact Video Services*, supra; see also, *United States Steel Corporation*, 280 NLRB 837 (1986); *Safety Carriers, Inc.*, 306 NLRB 960 (1992).

Having carefully considered the above criteria on the record before me, and having given full consideration to the arguments of the parties at the hearing and in their briefs, I find that the Petitioner has not sustained its burden that the Event Pavilion employees constitute an accretion to the existing unit that it represents. The Petitioner seeks to accrete both the Java and Blimpie employees and has not taken an alternate position. In this regard, I note that the Petitioner never represented the Blimpie operation or any of the employees now working for this entity. Accordingly, I must consider collectively the employees at Java and those working for Blimpie.

It appears that the Event Pavilion employees constitute a separate appropriate group, entitled to separate representation. Thus, a unit clarification petition accreting them to the existing unit is not appropriate. See, *Gitano Group, Inc.*, 308 NLRB 1172 (1992). In this regard, I note that the Event Pavilion employees are employed in a separate facility, have regular work related interchange with each other, are paid similar wages and benefits, perform similar, although not identical duties, and have common supervision. Moreover, the two formerly represented employees at Java are a minority of the total number of employees (four) sought to be accreted. *Id.* Accordingly, I find that the presumptive appropriateness of the new single location unit has not been rebutted and that the employees transferred from the bargaining unit do not constitute a majority of the Event Pavilion employees whom the Petitioner seeks to accrete to the unit. *Id.* at 1175.

The Petitioner cites *Gitano*, supra, and *Golden State Warriors*, 334 NLRB No. 96 (2001), in support of its assertion that the employees at the Event Pavilion would not constitute a separate appropriate unit. In support of this proposition it points to the fact that the Event Pavilion employees have "common ultimate supervision" with the represented employees and that they perform the "same sort of student-union functions" as the Dining Pavilion employees who will eventually return to TUC. The Petitioner further notes that the Event Pavilion employees constitute a much smaller grouping relative to the represented employees. The small size of the Event Pavilion grouping relative to the represented employees would, of course, not be a bar to accretion. However, the relative size of the existing unit and the unit sought to be accreted only becomes a significant factor *against accretion* when the group sought is larger than the smaller existing unit. See, *The Wackenhut Corporation*, 226 NLRB 1085 (1976); *UPF Corporation*, 309 NLRB 832 (1992).

*Gitano* and *Golden State* simply do not support the Petitioner's position. *Gitano* stands for the proposition that where an Employer transfers a portion of its represented employees to a new location, the Board will apply its long held rebuttable presumption that a unit at the new facility is a separate appropriate unit. When the presumption is not rebutted, as I have concluded is the case here, the Board will apply a "simple fact-based majority test to determine whether the [employer] is obligated to recognize and bargain with the union," with regard to the employees at the new facility. *Id.* at 1175. As noted,



the application of this test in the subject matter does not support the Petitioner's attempted accretion of the Event Pavilion (Java and Blimpie) employees.

*Golden State*, like *Gitano*, is an 8(a)(5) case. However, it does not involve, like *Gitano*, a partial transfer of the existing bargaining unit to a new location with the question of whether the employer is required to recognize and bargain with the union at the new location. Rather, *Golden State* involves the question of whether a one-season renovation related shut-down of the employer's venue extinguished its preexisting 9(a) collective-bargaining relationship with the union. *Golden State*, supra. Thus, the analysis in *Golden State*, required an examination of legal theories implicit in the resolution of this issue as applied to the facts, including the rebuttable presumption of majority support, the proscription against unilateral action following the expiration of a collective-bargaining agreement absent valid impasse, and whether a hiatus in operations extinguished employees' expectancy of recall. *Id.* at slip op. 2, 3. The issues involved in *Golden State* are wholly inapposite to a resolution of the question posed here; whether the Event Pavilion employees may be accreted to the existing bargaining unit.

The Petitioner also contends in brief, without citation to supporting authority, that the Event Pavilion employees share a sufficient community of interest with the bargaining unit to warrant accretion. For the reasons stated above, I have found that the Event Pavilion employees employed at Java and Blimpie constitute a separate appropriate unit and, therefore, further inquiry as to their community of interest vis-à-vis the unit is not necessary. However, for the sake of clarity, I note, as detailed below, that the Event Pavilion employees do not share an overwhelming community of interest, required for accretion, with the Employer's represented employees on the UC campus.

With regard to integration of operations, the record is clear that two franchise operations in the Event Pavilion operate completely independent of the Employer's other UC operations. The Java operation provides a somewhat unique service among the Employer's family of operations at UC. Additionally, the food service offered by Blimpie, while bearing some similarities to some of the Employer's other operations, is not dependent on any of those operations for the supply of its food product or any of the equipment utilized in the preparation of the product. The differences in the product served at the Employer's various food operations as clearly set forth in the record establish that Java and Blimpie are not integrated with the Employer's other UC operations. Additionally, the record reflects that there is no daily contact between the Event Pavilion employees and the represented and unrepresented employees at the Employer's other locations. Further, there has been no temporary interchange of employees between the Event Pavilion and the operations represented by the Petitioner. Permanent interchange has been limited to the two employees who were transferred to Java from the Dining Pavilion, including Gonzales, who is a stipulated supervisor. In this connection, I note that the Board will not find an accretion appropriate where the contact between the two groups of employees is incidental and infrequent. See, e.g., *Towne Ford Sales and Town Imports*, 270 NLRB 311 (1984), enf'd. 759 F.2d 477 (9th Cir. 1985).

With regard to day-to-day supervision, the record again demonstrates a lack of any temporary interchange between supervisors and managers of the Employer's represented operations and supervisors and managers of the Event Pavilion operation. There has been some permanent interchange as two of the four supervisors with responsibility over the Event Pavilion operations, Larkin and Gonzales, were formerly employed in the bargaining unit at the Dining Pavilion. However, there is no evidence of daily or regular contact between supervisors and managers of the represented operations and the Event Pavilion operations. Food Service Director Gebele is the lowest ranking supervisor with responsibility over both represented and unrepresented operations as his duties include overseeing all of the Employer's UC operations with the exception of Sander and Siddall cafeterias. It appears that complete common supervision occurs only at the highest local level of management in the person of Senior Food Service Director Rayan. I note that the Board considers a lack of common day-to-day supervision to be of particular importance in finding an accretion. *Gitano Group*, supra at 1174.

There is no bargaining history that supports accreting the entire Event Pavilion operations into the existing unit represented by the Petitioner. For example, the original complement of Blimpie employees was transferred from Superhero, an unrepresented operation. There is, of course, bargaining history that arguably supports the inclusion of the Java operation into the existing unit.

The Petitioner previously represented the Java employees at TUC only a short distance from the Event Pavilion and with only a brief hiatus between the cessation of operations at TUC and the establishment of Java at the Event Pavilion. However, the Petitioner has not sought, in the alternative, to accrete only those employees working in bargaining unit positions at Java. Therefore, the bargaining history does not support the Petitioner's position that all employees at the Event Pavilion should be accreted to its unit. Thus, I am not in this decision making any finding on the appropriateness of a petition seeking to accrete only the Java employees.

With regard to similarity of working conditions, I note that all of the Employer's employees on the UC campus work in food or beverage service operations and that all of them work similar hours. None of the work requires a high degree of training or education. In fact, only the full service cooks and the Java employees who prepare various specialty drinks require any significant amount of experience. The work itself at each operation is distinguished by the extent of food or drink service provided and by the requirements of the different franchises. Additionally, all of the Employer's employees on the UC campus receive similar wages and are eligible to receive similar benefits, although the employee contribution level for these benefits varies. In sum, there are significant similarities in working conditions between the represented employees and the petitioned for employees which moderately favors accretion. The remaining two factors, common control over labor relations and geographical proximity, also militate in favor of accretion. However, the other examined factors militate so heavily against accretion that there is no question that the degree of community of interest between the represented group and the employees sought to be accreted is significantly less than overwhelming.

Based on the foregoing, the entire record, and careful consideration of the arguments of the parties at the hearing and in their respective briefs, I find that the unit of the Employer's employees employed at Sander, Siddall, and the Dining Pavilion cannot be clarified to include the employees employed at the Java and Blimpie operations in the Event Pavilion. Accordingly, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m. (EST) **January 16, 2002.**

Dated at Cincinnati, Ohio this 2<sup>nd</sup> day of January 2002.

/s/ ***Richard L. Ahearn***

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385-7533-2020-6700